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8 COMMUNITY COLLEGE DISTRICT, et al.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

TABIA LEE,

Plaintiff,
vs.

THE FOOTHILL-DE ANZA COMMUNITY COLLEGE DISTRICT, DE ANZA COLLEGE; ALICIA CORTEZ and THOMAS RAY, in their individual capacities.

Defendant(s).

Case No. 5:23-CV-03418-NW

**DEFENDANTS' SUPPLEMENTAL CASE
MANAGEMENT CONFERENCE
STATEMENT**

Pursuant to the Court’s February 24, 2025 Order Reassigning Case (ECF No. 75) to Judge Noël Wise, Defendants to the above-entitled action submit this SUPPLEMENTAL CASE MANAGEMENT STATEMENT (“SCMS”). This SCMS supplements the Joint Case Management Conference Statement and Order, as modified by Judge Eumi K. Lee on February 12, 2025 (ECF No. 73). Subsequent to Judge Lee’s February 12, 2025 Case Management Order, Judge Lee granted Defendants’ Motion to Dismiss Second Amended Complaint on February 23, 2025 (the day before the case was transferred) with leave to amend in part and without leave to amend in part. *See* ECF No. 74. The SCMS responses by Defendants take into account the fact

1 the Second Amended Complaint was dismissed, that Plaintiff has 21 days to file an Amended
 2 Complaint or take other action, and Defendants will be entitled to respond.

3 **1. Jurisdiction & Service**

4 Plaintiff Tabia Lee's ("Plaintiff") Second Amended Complaint ("SAC"), which was
 5 dismissed by the Court on February 23, 2025, with partial leave to amend, included federal
 6 causes of action based on 42 U.S.C. § 1983 and Title VII of the Civil Rights Act of 1964, as
 7 amended. No issues exist regarding personal jurisdiction or venue. All parties have been
 8 served.

9 **2. Facts**

10 **Statement By Defendants:** Plaintiff Tabia Lee was hired in August 2021 as the Faculty
 11 Director of the Office of Equity, Social Justice and Multicultural Education at De Anza
 12 College, a tenure track position. Defendant Foothill-De Anza Community College District
 13 determined pursuant to the applicable procedures set forth in the California Education Code to
 14 release Plaintiff from her tenure track position for the 2023-2024 Academic Year. The
 15 nonrenewal of Plaintiff's employment to continue in a tenure track position for the 2023-2024
 16 Academic Year, and Defendants' actions toward Plaintiff during her employment, were lawful,
 17 appropriate, and consistent with the California Education Code and the Foothill-De Anza
 18 Community College District's policies and Tenure Review procedures negotiated with its
 19 faculty union. As addressed in No. 4 below, on February 23, 2025, Judge Lee granted
 20 Defendants' Motion to Dismiss Second Amended Complaint, with leave to amend in part and
 21 without leave to amend in part. (ECF No. 74). The Court granted Plaintiff 21 days (until
 22 March 17, 2025) to file an amended complaint consistent with the Court's Order.

23 **3. Legal Issues**

24 The Court's February 23, 2025 Order on Defendants' Motion to Dismiss Second Amended
 25 Complaint granted Plaintiff leave to amend the following limited Counts against the following
 26 Defendants:

27 (1) Count 1 – 42 U.S.C. § 1983 (First Amendment Free Speech Retaliation) against
 28 Defendants Alicia Cortez and Thomas Ray in their individual capacities with respect to

one alleged speech activity of Plaintiff.

(2) Count 4 – Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000-e (Retaliation) against Defendants Foothill-De Anza Community College District and De Anza College.

4. Motions

Prior Motions: Defendants filed a Rule 12(b)(6) Motion to Dismiss the First Amended Complaint (ECF No. 34) on October 12, 2023. On May 7, 2024, the Court granted the Motion to Dismiss and dismissed the First Amended Complaint in its entirety, with partial leave to amend. (ECF No. 51.) The Court dismissed the following Counts in the FAC without leave to amend: Count 2 (Title VI); Count 3 (Cal. Const., Art. 1, Sec. 2(a)); Count 4 (Wrongful Termination – FEHA); and Count 5 (Wrongful Termination – Cal. Const., Art. 1, Sec. (8)). The three Counts dismissed, with leave to amend, were the following : (1) First Amendment Free Speech (42 U.S.C. § 1983) (herein “First Amendment”); (2) Title VII of the Civil Rights Act of 1964 (42 U.S. C. § 2000-e); and (3) California’s Fair Employment and Housing Act (Gov’t Code § 12940 et seq.).

Defendants filed a Rule 12(b)(6) Motion to Dismiss the Second Amended Complaint (ECF No. 55) on June 14, 2024. On February 23, 2025, the Court granted the Motion to Dismiss and dismissed the Second Amended Complaint in its entirety, with leave to amend in part and without leave to amend in part (ECF No. 74). The Court dismissed the following Counts in the Second Amended Complaint with prejudice: Count 1 -- First Amendment Retaliation (42 U.S.C. § 1983) against the following Defendants: Patrick Ahrens, Laura Casas, Pearl Chang, Peter Landsberger, Lee Lambert, Gilbert Wong, Christina Espinosa-Pieb, Lydia Hearn and Lloyd Holmes; Count 2 – First Amendment Censorship (42 U.S. C. § 1983); Count 3 – Title VII Hostile Work Environment; and Count 5 – FEHA. The two Counts dismissed, with leave to amend as to certain Defendants, were the following: Count 1 – First Amendment Retaliation (42 U.S.C. § 1983) against Alicia Cortez and Thomas Ray in their individual capacities; and

1 Count 4 – Title VII Retaliation against the District and De Anza College.
2

3 Anticipated Motions: Defendants anticipate, as appropriate given the status of the case,
4 filing additional motions including a motion for summary judgment/adjudication.
5

6 **5. Amendment of Pleadings**

7 The Court’s February 23, 2025 Order granted Plaintiff 21 days to file an Amended
8 Complaint.
9

10 **6. Evidence Preservation**

11 The parties have not yet met and conferred pursuant to Rule 26(f) regarding reasonable and
12 appropriate steps taken to preserve evidence relevant to the issues reasonably evident in this
13 action and reviewed the Guidelines Relating to the Discovery of Electronically Stored
14 Information (“ESI Guidelines”) as the March 5, 2025 deadline for so-doing previously set by
15 the Court was after the Court’s February 23, 2025 Order dismissing the Second Amended
16 Complaint and before the expiration of the 21 days within which the Court granted leave to
17 amend which expires March 17, 2025.

18 **7. Disclosures**

19 As addressed in No. 6 immediately above, the parties have not yet met and conferred
20 pursuant to Rule 12(f) given the absence of a pending Amended Complaint. The case is not
21 subject to General Order Nos. 56 or 71.

22 **8. Discovery**

23 No discovery has been conducted to date. As addressed in No. 6 above, the Court’s
24 February 23, 2025 Order granted Plaintiff 21 days to file an Amended Complaint.
25

26 **9. Class Actions**

27 This case is not a class action.
28

29 **10. Related Cases**

30 Defendants are not aware of any related cases.

1 **11. Relief**

2 The Court's February 23, 2025 Order granted Plaintiff 21 days to file an Amended
3 Complaint.

4 **12. Settlement and ADR**

5 The parties have not engaged in any settlement discussions at this juncture in the case.
6 The Court continued the ADR Certification deadline on October 30, 2024 with a new date
7 eventually set by the Court in February 2025 for March 5, 2025. The parties have not met and
8 conferred about ADR or submitted any ADR Certification because the March 5, 2025 deadline
9 for Certification was after the Court's February 23, 2025 Order dismissing the Second
10 Amended Complaint and before the expiration of the 21 days within which the Court granted
11 leave to file an amended complaint (March 17, 2025).

12 **13. Other References**

13 Defendants do not agree that this case is suitable for reference to binding arbitration, a
14 special master, or the Judicial Panel on Multidistrict Litigation.

15 **14. Narrowing of Issues**

16 At this juncture, given the Court's February 23, 2025 Order, Defendants are not able to
17 identify any other ways to potentially narrow issues or otherwise expedite resolution of issues
18 most consequential to this case.

19 **15. Scheduling**

20 Defendants propose that the parties submit another Supplemental Case Management
21 Conference Statement addressing scheduling, as appropriate given the status of the case, of the
22 Rule 12(f) meet and confer and the ADR Certification as addressed in Nos. 6, 7 and 12 above.
23 The other future case management conference dates set by the Court in the February 12, 2025
24 Order (ECF No. 73) may become an issue depending on the status of the case.

26 **16. Trial**

27 Plaintiff has demanded a jury trial. Defendants propose that they submit, if appropriate,
28 on a date determined by the Court at such time as the pleadings are closed, a Supplemental

1 Case Management Statement addressing the expected length of trial.
 2

3 **17. Disclosure of Non-party Interested Entities or Persons**

4 Defendants have not filed the required Certifications of Interested Entities and Persons
 5 at this juncture given the status of the case and the parties. However, no such entities or
 6 persons have been identified at this time by Defendants.
 7

8 **18. Professional Conduct**

9 Attorneys of record for Defendants have reviewed the Guidelines for Professional
 10 Conduct for the Northern District of California.
 11

12 **19. Other**

13 Defendants believe that this statement addresses all pertinent matters at this juncture, so as
 14 to facilitate the just, speedy and inexpensive disposition of this matter.
 15

16 **20. Additional Information Requested In The February 24, 2025 Order Transferring Case**

17 (i) **List Or Description Of Parties:** Plaintiff: Tabia Lee. Defendants: Foothill-De Anza
 18 Community College District, De Anza College, Alicia Cortez and Thomas Ray.
 19

20 (ii) **Summary of Claims:** *See* No. 4 above.
 21

22 (iii) **Brief Procedural History of Case:**
 23

- 24 • *July 10, 2023* – Initial Complaint filed by Plaintiff.
 25
- 26 • *September 25, 2023* – Amended Complaint filed by Plaintiff per stipulation of the
 27 parties.
 28
- *October 12, 2023* – Motion to Dismiss First Amended Complaint filed by all
 Defendants.
 29
- *May 7, 2024* – Court (Judge P. Casey Pitts) issued an Order Granting Motion to
 30 Dismiss First Amended Complaint, with leave to amend in part.
 31
- *May 31, 2024* – Second Amended Complaint filed by Plaintiff.
 32
- *June 14, 2024* – Motion to Dismiss Second Amended Complaint filed by all
 Defendants.
 33

- 1 • *August 20, 2024* – Case reassigned to Judge Eumi K. Lee.
- 2 • *October 30, 2024* – Hearing on Defendants' Motion to Dismiss Second Amended
- 3 Complaint.
- 4 • *December 4, 2024* – First Case Management Conference.
- 5 • *February 12, 2025* – Modified Case Management Conference Statement and
- 6 Order issued by Judge Lee.
- 7 • *February 23, 2025* – Judge Lee issued an Order Granting Motion to Dismiss the
- 8 Second Amended Complaint, with leave to amend in part and without leave to
- 9 amend in part.
- 10 • *February 24, 2025* – Case reassigned to Judge Noël Wise.

12 Dated: March 17, 2025

PLAZA DE JENNINGS & CHIPMAN LLP

13 By: Jayne B. Chipman

14 Carmen Plaza de Jennings
Jayne Benz Chipman

15 Attorneys for Defendants
16 THE FOOTHILL-DE ANZA
17 COMMUNITY COLLEGE DISTRICT et al,

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